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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 253/2017

VIR CHAND MAINI & ANR.

..... Petitioners

Through: Mr Pardeep Dhingra and Mr Mohit
Nandwani, Advocates.

versus

RELIANCE CAPITAL LIMITED

..... Respondent

Through: Mr Rajat Katyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.02.2018

VIBHU BAKHRU, J

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning an Arbitral Award dated 04.02.2017 (hereafter 'the impugned award') passed by the Sole Arbitrator Sh. B.S. Shelar, Retired. Additional Chief Metropolitan Magistrate, Mumbai.

2. The impugned award was rendered in context of disputes that had arisen in respect of a Mortgage Loan Agreement dated 29.08.2007 (hereafter 'the Agreement') entered into between the concerned parties. The Agreement was entered into pursuant to a loan application against the property bearing no. D-105, 2nd Floor, Defence Colony, New Delhi-110048 (hereafter 'the said Property').

3. Briefly stated, the relevant facts are that the petitioners had requested for grant of a loan of ₹2,50,00,000/-, which was subsequently reduced to ₹2,00,00,000/-. The said loan was to be used for the purpose of discharging the petitioners' liability to HSBC Bank, which held the title documents of the said property as a collateral.

4. On or about 05.09.2007, the respondent company disbursed a sum of ₹88,00,000/- after deducting a sum of approximately ₹1,24,720/- on account of certain charges. The petitioners paid several Equated Monthly Installments (EMI's) till 19.11.2012 but failed and neglected to repay the entire amount with interest. In the aforesaid context, the respondent made a claim for the remaining principal amount with interest.

5. By the impugned award, the Arbitrator has accepted the claim made by the respondent and awarded a sum of ₹80,65,923.29 (as on 16.04.2013) along with interest at the rate of 15.23% per annum from 17.04.2013, till payment or realization of the said sum.

6. Mr Dhingra, the learned counsel appearing for the petitioner has assailed the impugned award on three fronts. First, he contends that the Agreement was tampered with to provide that the Courts at Mumbai would have the exclusive jurisdiction. He contends that since the impugned award was rendered on the basis of a tampered document, the impugned award is liable to be set aside.

7. Second, he contends that the Arbitral Tribunal had grossly erred in unilaterally converting the mortgage agreement to a simple loan agreement. He stated that the Arbitral Tribunal had no jurisdiction to alter the character

of the Agreement and, therefore, the impugned award is patently illegal.

8. Lastly, he submitted that the Agreement was not registered and, therefore, the arbitration clause contained in the Agreement was not binding.

9. The first and foremost controversy to be addressed is with regard to the tampering of the Agreement. Clause 19 of the Agreement provides that the Agreement would be construed in accordance with the laws in India and any dispute with regard to the Agreement, would at the option/discretion of the lender be subject to the jurisdiction of Courts of the City of Mumbai. In the original document as signed by the petitioners, the name of the City was left blank. This is clearly established by the fact that the copy of the document furnished by the respondent in the petition filed under Section 9 of the Act at an earlier stage indicated that the name of the City was left blank. However, in the Agreement produced before the Arbitral Tribunal “Mumbai” had been handwritten to reflect that the parties had agreed that the Courts in the City of Mumbai would have the exclusive jurisdiction in respect of the Agreement. The relevant extract of Clause 19 of the Agreement is quoted below:-

“19. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects with the Laws in India and the Borrower and Lender hereby mutually agree that any matter or issues arising hereunder or any dispute hereunder shall, at the option/discretion of the Lender, be subject to the exclusive jurisdiction of the Courts of the City of **Mumbai** India. This shall not however limit the rights of the Lender to file/take proceedings in any other Court of Law or Tribunal of Competent jurisdiction.”

[The name of the City filled in by the respondent is subsequently highlighted in bold].

10. In the given facts, there can be no dispute that the respondent is responsible in filling in the name of the city, Mumbai, much after the Agreement had been signed by the parties.

11. This Court is of the view that the said interpolation in the Agreement is not material. This is so because Clause 17 of the Agreement also indicates that the venue of the arbitration shall be at Mumbai. Clause 17 of the Agreement is set out below:-

“17. ARBITRATION

In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding, the real meaning or purport hereof (“Dispute”), such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or reenactment thereof by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be ___ Mumbai _ and the arbitration shall be conducted in English language.”

11. It is clear from the above that the parties had agreed that the place of arbitration would be Mumbai. Thus, in view of the authoritative decision of the Supreme Court in ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors.*** (2017) 7 SCC 678, there can be no dispute that the Courts at Mumbai alone would have the jurisdiction regarding arbitration between the parties. Thus, the petitioners’ contention that the arbitration ought to have been held in New Delhi under

the supervision of this Court and, therefore, impugned award rendered by the Arbitral Tribunal at Mumbai is without jurisdiction is unmerited and is, accordingly, rejected.

12. The next issue raised by the petitioners is in respect of the Arbitral Tribunal treating the Agreement as the Simple Loan Agreement. This Court finds no infirmity with the impugned award in this regard. In terms of Clause 4 of the Agreement, the petitioners had agreed to create a security interest in such form and in manner as required by the respondent. Admittedly, the parties had agreed that the loan advanced by the respondent would be secured by equitable mortgage on the said property. At the material time, the title documents of the said property were in the possession of HSBC Bank and the said documents were to be held by the respondent.

13. There is some controversy as to who was responsible for securing the release of the said documents from HSBC Bank: the petitioners' claim that the amount of loan was to be paid directly to HSBC Bank by the respondent and the respondent was required to secure the release of the title documents of the said property directly in its favour; on the other hand, the respondent claims that the petitioners were responsible for securing the release of the title documents from HSBC Bank and deposit the same with the respondent. At this stage, this controversy may not be material as the respondent is not claiming any security interest in the said property but is only securing recovery of the loan advanced to the petitioners.

14. The Arbitral Tribunal had concluded that since the security interest in respect of the said property had not been created, the Agreement could be

treated as a Simple Loan Agreement and the petitioners would be obliged to return the amount of loan availed with interest. This Court finds no infirmity with the aforesaid view as the petitioners cannot absolve themselves of the liability of returning the loan, which was admittedly availed by them.

15. Mr Dingra contended that the effect of treating the mortgage loan agreement as a simple loan agreement would have the material bearing on the computation of interest. However, despite opportunity, the learned counsel has produced no material to indicate as to how the calculation of interest would be effected. He had handed over a tabular statement to indicate the calculation of interest which according to the petitioners would be payable. The said statement indicates that the petitioners had paid EMI's of ₹1,05,615/- from October 2007 to April 2013, aggregating ₹70,76,205/-. The said statement also indicates the sum total of interest to be ₹34,06,528/-. Mr Dhignra, submitted that the interest charged by the respondent is significantly higher than the interest calculated by the petitioners.

16. The receipt of the EMIs may be admitted but a close examination of the tabular statement handed over by Mr Dingra indicates that the calculations of interest are fundamentally flawed. The petitioners have proceeded to deduct the entire equated monthly installment from the principal amount. This is not sustainable as an EMI has two components; one pertaining to the repayment of the principal and the other pertaining to the interest. Only the amount pertaining to the principal (which is equal to the amount of EMI less the monthly interest) would be applied towards reducing the principal.

17. In view of the above, there is no merit in the contention that the respondent had charged higher interest than as agreed between the parties. The learned counsel appearing for the respondent had also produced a tabular statement indicating the amounts due as on 27.02.2018. The said amounts has been calculated by computing interest on reducing balances. The said statement indicates that initially the rate of interest was 12% but the rates thereafter were successfully increased to 12.75%, 13.25%, 13.73%, 14.23% and 15.23%.

18. In the last three years, that is, from 06.12.2016 there has been a drop in the interest rate to 14.98% and the learned counsel appearing for the respondent had indicated the respondent's willingness to charge the reduced rate of interest for a period after 06.12.2015 provided the petitioners agree to pay the amount within a reasonable period. However, the petitioners are not agreeable for the same.

19. In view of the above, this Court is unable to accept that there is any infirmity in the calculation of interest.

20. The remaining issue to be considered is in respect of the petitioners' contention that the Arbitration Agreement could not be implemented as the Agreement was not registered. This contention is also unmerited. It is well settled that an arbitration agreement is a separate agreement, even though it is embodied as an arbitration clause as a part of the main agreement. It is also settled that an arbitration agreement does not require any registration.

21. There is no dispute that the petitioners had availed of the loan granted by the respondent. Thus, they cannot absolve themselves from the liability to

repay the same along with interest.

22. In view of the above, this Court is unable to accept that the impugned award offends the fundamental policy of Indian Law or is patently illegal.

23. The petition is, accordingly, dismissed.

FEBRUARY 28, 2018
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VIBHU BAKHRU, J

